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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,671	05/18/2001	Siew Yong Sim	72100.911D4	3658
7590	06/10/2004		EXAMINER	
James H. Salter BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP 12400 Wilshire Boulevard Seventh Floor Los Angeles, CA 90025			EL HADY, NABIL M	
			ART UNIT	PAPER NUMBER
			2154	
			DATE MAILED: 06/10/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/681,671	SIM ET AL.
	Examiner Nabil M El-Hady	Art Unit 2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 May 2001.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-44 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

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1. Claims 1-44 are pending in this application.

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it exceeds 150 words in length.

Correction is required. See MPEP § 608.01(b).

4. Figures 1-4 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-44 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 of copending Application No. 09/681,668. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and the copending application disclose sending a query to a plurality of nodes to determine what content to download, receive replies to said query, download desired portions, and assembling of the content.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 1-44 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-55 of copending Application No. 09/681,672. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and the copending application disclose sending a query to a plurality of nodes to determine what content to download, receive replies to said query, download desired portions, and assembling of the content.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 1-44 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of copending Application No. 09/984,019. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and the copending application disclose sending a query to a plurality of nodes to determine what content to download, receive replies to said query, download desired portions, and assembling of the content.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-3, 7, 17-19, 23, 31-33, and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Raz et al. (US 2002/0138640), hereafter “Raz”,

11. As to claims 1 and 31, Raz discloses the invention as claimed including a method and apparatus (abstract and Fig. 2) for initializing a new node (intermediate server) in a network comprising: adding a new node to a network having a plurality of nodes (any number of tiers of

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intermediate servers can be provided, [0019]); sending a query automatically to said plurality of nodes to determine what contents to download (the intermediate server broadcast data to other intermediate servers [0018]); receiving replies to said query from a subset of said plurality of nodes having said contents for said new node (knowledge about the cache contents of upstream and downstream intermediate servers can be used [0018]); downloading desired portions of said contents from said subset of said plurality of nodes having said contents ( Figs. 3 and 4)

12. As to claim 17, the claim is rejected for the same reasons as claim 1 above. In addition, a computer program product comprising: a computer usable medium comprising computer readable code for initializing a new node in a network, said computer readable program code configured to: add a new node to a network having a plurality of nodes; send a query automatically to said plurality of nodes to determine what content said new node should have; receive replies to said query from a subset of said plurality of nodes having said content for said new node; download a desired portion of said content from said subset of said plurality of nodes having said content; is inherent from Raz's disclosure.

13. As to claims 2, 18, and 32, Raz discloses said network comprises a packet communication network (inherent in [0027]).

14. As to claims 3, 19, and 33, Raz discloses said plurality of nodes are arranged in the form of a virtual tree for passing control information, and said new node is a node of said tree ([0028]).

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15. As to claims 7, 23, and 37, Raz discloses announcing said new node's inclusion in said network by sending a notification to at least one neighbor node; forwarding said notification to nodes neighboring said at least one neighbor node, said forwarding continuing until each of said plurality of nodes in said network receives said notification (inherent in Figs. 2-4; and [0019]).

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 4-6, 8-9, 15, 20-22, 24-25, 34-36, and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raz et al. (US 2002/0138640), hereafter "Raz" in view of Aggarwal et al. (US 5,924,116), hereafter "Aggarwal".

18. Aggarwal et al. is cited by the applicant in IDS Paper No. 4 filed 4/6/2004.

19. As to claims 4, 5, 20, 21, 34, and 35, Raz does not explicitly disclose that each node has a set of attributes and a set of rolled up attributes for identification that are included in the query of said new node. Aggarwal, on the other hand, discloses each node has a set of attributes and a set of rolled up attributes for identification that are included in the query of said new node (col. 3, line 56 to col. 4, line 5). It would have been obvious to one skilled in the art at the time of the invention to combine the teachings of Raz and Aggarwal because Aggarwal's attributes and rolled up attributes would enhance communication of node status to other nodes resulting in

increase in the efficiency of Raz's system. It would have been obvious, too, to one skilled in the art at the time of the invention that an attribute may be in the form of bitmap data.

20. As to claims 6, 22, and 36, Aggarwal discloses said set of rolled up attributes comprises a combination of the set of attributes of all lineal descendants of said node, said combination comprises the binary OR of said all lineal descendants of said node (col. 5, line 57 to col. 6, line 7).
21. As to claims 8, 24, and 38, Aggarwal discloses said new node does not receive said notification from a neighbor node (obvious in a hierarchical tree protocol).
22. As to claims 9, 25, and 39, Raz discloses said content is stored as block files in said plurality of nodes having said content (1, 2, 3, Fig. 3).
23. As to claim 15, the claim is rejected for the same reasons as claims 1, 3, 4, and 9, above. In addition, Raz discloses a method for initializing a new node (intermediate server) in a network comprising: adding a new node to a network having a plurality of nodes (any number of tiers of intermediate servers can be provided, [0019]), wherein said plurality of nodes is arranged in the form of a virtual tree and said new node is a node of said tree ([0028]); sending a query from said new node to said plurality of nodes to determine what contents to download (the intermediate server broadcast data to other intermediate servers [0018]), said contents being stored as block files in one or more nodes of said network (1, 2, 3, Fig. 3); receiving replies to said query from a subset of said plurality of nodes having said contents for said new node (knowledge about the cache contents of upstream and downstream intermediate servers

can be used [0018]); downloading desired portions of said contents from said subset of said plurality of nodes having said contents( Figs. 3 and 4). Aggarwal discloses each node of said tree having a set of attributes and a set of rolled up attributes for identification (col. 3, line 56 to col. 4, line 5).

24. As to claim 16, the claim would be allowable after overcoming the provisional rejection under the judicially created doctrine of obviousness-type double patenting, set forth in this Office action. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art in record taken alone or in combination discloses each of the replies from a replying node comprises: identification of what content the new node should have; identification of portions of the content available in the replying node; and performance characteristics of the replying node.

25. As to claims 10-14, 26-30, and 40-44, the claims are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and after overcoming the provisional rejection under the judicially created doctrine of obviousness-type double patenting, set forth in this Office action. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art in record taken alone or in combination discloses each of the replies from a replying node comprises: identification of what content the new node should have; identification of portions of the content available in the replying node; and performance characteristics of the replying node.

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kobayashi et al. (US 5,905,847) ; Dasgupta (US 5,926,101) ; Webber et al. (US 5,367,698); Leighton et al. (US 6,108,703); Higgens et al. (US 6,370,146); Riddle (US 4,466,060); Wei et al. (US 6,515,967); Perlman (US 5,079,767); and Flammer, III (US 5,903,566).

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nabil M El-Hady whose telephone number is (703) 308-7990. The examiner can normally be reached on 9:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (703) 305-8498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 6, 2004

  
Nabil El-Hady, Ph.D, M.B.A.  
Primary Patent Examiner  
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